



15 DEC 2009

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In-re Application of LIN et al :
U.S. Application No.: 10/585,628 :
PCT Application No.: PCT/CA2005/000152 :
Int. Filing Date: 07 February 2005 : DECISION
Priority Date Claimed: 06 February 2004 :
Attorney Docket No.: 19339-106126 :
For: TRIM DOOR HARDWARE CARRIER AND :
METHODS OF ASSEMBLING VEHICLE DOOR :

This is in response to applicant's renewed petition under 37 CFR 1.47(a) filed 21 October 2009.

BACKGROUND

On 07 February 2005, applicant filed international application PCT/CA2005/000152, which claimed priority of an earlier United States application filed 06 February 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 18 August 2005. The thirty-month period for paying the basic national fee in the United States expired on 06 August 2006.

On 11 July 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 16 April 2009, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 15 June 2009, applicant filed a petition under 37 CFR 1.47(a).

On 21 August 2009, this Office mailed a decision dismissing the 15 June 2009 petition.

On 21 October 2009, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

With regard to item (1) above, the renewed petition is accompanied by declarations executed by the available inventors, each on his/her own behalf and on behalf of the nonsigning inventor.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. . . . It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

The petition states that joint inventor Manfred Fritsch refuses to sign the application papers. The petition adequately demonstrates that a bona fide attempt was made to present a copy of the application papers to Fritsch and that Fritsch received such papers (see letter dated 30 January 2007 and copy of delivery confirmation receipt). Furthermore, the petition sufficiently illustrates that Fritsch refuses to sign. In particular, Fritsch's failure to respond to the 30 January 2007 letter evidences a constructive refusal to cooperate. Thus, it can be concluded with reasonable certainty that Fritsch refuses to join in the application.

With regard to item (3) above, applicant has provided the requisite petition fee.

With regard to item (4) above, the renewed petition states the last known address of the nonsigning inventor.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 07 February 2005, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 21 October 2009.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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UNITED STATES PATENT AND TRADEMARK OFFICE

15 DEC 2009

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In re Application of LIN et al
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Int. Filing Date: 07 February 2005
Priority Date Claimed: 06 February 2004
For: TRIM DOOR HARDWARE CARRIER AND
METHODS OF ASSEMBLING VEHICLE DOOR

Dear Manfred Fritsch:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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